
(1989) 04 CAL CK 0055
In the Calcutta High Court
Case No : Matter No. 3054 of 1987

Manindra Nath Halder and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 06-04-1989

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 161
Prevention of Corruption Act, 1988 — Section 5(ii)

Citation : 94 CWN 338

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Judgement

Bhagabati Prasad Banerjee, J.—The petitioner moved this writ application challenging the validity of the Charge-sheet No. 16 dated 15th August, 1987 which is Annexure "L" to the writ petition. The facts of this case are as follows:

The petitioner while serving as Inspector, Food and Supplies Department, Government of West Bengal, was arrested by the Police in connection with an investigation started against him by the Police in respect of an offence u/s 161 I.P.C. S. 5(ii) of the prevention of Corruption Act read with Section 120B of the Indian Penal Code. The said Criminal Case refers to Memari Police Station Case No. 9 dated 10th January, 1983. Immediately after the arrest of the petitioner, by the order dated 13th January, 1983 the petitioner was placed under suspension from service by the Director, District Distribution, Procurement and Supply and the Appointing Authority under rule 7(3) of the West Bengal Services (Classification, Control and Appeal) Rules, 1971 on the ground that the petitioner was in Police custody for a period exceeding 48 hours.

2. In the First Information Report which was lodged in this behalf the allegation against the petitioner was:

(a) That Shri K. Roychowdhury, D.S.P., D.E.B., Burdwan received certain information that the petitioners were not allotting food-grains without illegal gratification and thereupon, the police arranged to lay a trap and Rs. 90/- of

different denominations notes were marked and signed by the Deputy Magistrate for offering to the petitioners for obtaining allotment of foodgrains/sugar and thereafter, some MR Dealers were given the said money for offering to the petitioners.

(b) Thereafter, the informant DSP and his party proceeded to the said Food and Supply Office at Memari Block-I for watch and detection from outside and found the petitioners and two other accused persons were making allotment of foodgrains to the MB Dealers. The said two other accused persons are Sunil Kumar Bose and Balai Chandra Laha; both were employed as Sub-Inspectors at the Memari Block-I.

(c) Thereafter, the police rushed into the room of the said office and detained the petitioners and other accused persons.

(d) Thereafter, a search was made and from the Drawer of a table in the said room the police party allegedly recovered the said sum of Rs. 90/- and other sum of Rs. 618.45p. The police also seized some other things including Return Forms in respect of MR Dealers etc.

3. As the Police authorities remained inactive in the matter of conclusion of the investigation, the petitioner moved in this Court a Criminal Revisional application in its Criminal Revisional Jurisdiction, whereupon, Their Lordships the Hon'ble Mr. Justice P.C. Borooah and the Hon'ble Mr. Justice S. Chakraborty (as Their Lordships then were) passed an order on 12th April, 1984 which was as follows:

The I.O. of Memari P.S. Case No. 9 dated 10/1/83 under Sections 161 and 120B of the I.P.C. read with Section 5(ii) of the Prevention of Corruption Act is directed to submit a report to this Court on the 30th of April, 1984 as to what is the present state of investigation and when the charge-sheet is likely to be submitted. This order will not prevent the I.O. from submitting the charge-sheet in the meantime.

As prayed for, let a plain copy of the order, duly counter-signed, be handed over to the petitioners.

4. No such report in terms of that order was filed and ultimately Their lordships by the order and judgment dated 19th July, 1984 in Criminal Revision Case No. 1433 of 1984, after hearing the learned Advocates appearing on behalf of the petitioner as well as the State, passed the following order-

The petitioners who were employed in the Good & Supplies Deptt. of the Govt, of West Bengal as Inspector-in-Charge and Sub-Inspector attached to Memari Block I & II, were arrested on 10/1/83 from the Memari Block-I office by the S.P., D.E.B., Burdwan and an FIR was drawn up leading to the initiation of the Memari P.S. Case no. 9 dated 10.1.83 u/s 161 I.P.C. and Section 5(2) of the Prevention of Corruption Act, 1947 read with Section 120B I.P.C.

In this application with notice to the State, the petitioners' grievance is that they

have been under suspension for such a long period and the investigating agency is not taking any steps in the matter either to submit a charge-sheet or to report in a final form in respect of this case. We had called for a report from the I.O. about the progress of the investigation as far back as on 12/4/84.

The petitioners are alleged to have taken a bribe of Rs. 90/- from some M.R. Dealer. We fail to understand why the investigation should drag on for over one and a half years. Persons should not be harassed unnecessarily in a case, the investigation of which with due diligence, should be completed within a space of a few months.

We, therefore, dispose of this application as follows:

If charge-sheet or a report in the final form is not submitted in respect of G.R. Case No. 45/83 pending against the petitioners in the Court of the S.D. J.M., Burdwan within eight weeks from date, the learned Magistrate should discharge the petitioners.

5. Within the period of eight weeks from the date of the said judgment neither charge-sheet nor report in the final form was submitted by the Investigating Office and whereupon, the learned Sub-divisional Judicial Magistrate, Burdwan (Sadar) on 13th September, 1984 passed the following order:

Neither charge-sheet nor a report in final form has been submitted by the I.O. by this day, Hence, in view of the order of the Hon'ble Court which was passed on 10/7/84 in Criminal Revision No. 1433 of 1984, the accused persons are discharged.

6. Immediately after the petitioner was discharged from the said criminal case, the order of suspension that was passed against the petitioner by the Disciplinary Authority was not recalled and/or revoked and under such circumstances, on the representation made by the petitioner, the then Advocate General, State of West Bengal, S.K. Acharya (since deceased) wrote, a letter to the Hon'ble Minister-in-charge of the Department of Food & Supplies on 4th February, 1985, whereby the learned Advocate General requested, the Minister concerned to allow, the petitioner to join in his service as the petitioner has been discharged from the said Criminal Case. In reply to the said letter of the then learned Advocate General, State of West Bengal, Sri Radhika Ranjan Banerjee, Hon'ble Minister-in-Charge of the Department of Food & Supplies informed the learned Advocate General by the letter dated 7th May, 1985 that "the Director of District Distribution, Procurement and Supply has already been instructed to withdraw the suspension of the two employees concerned treating the period of their suspension as the period spent on duty and to allow them to join their duties."

7. Immediately thereafter, a formal order was issued by Sri M. K. Bose, Director of the Department of District Distribution, Procurement and Supply, Government of West Bengal, whereby the order suspension was withdrawn and the petitioner was allowed to join in service. In The said order it was provided that

the period spent by the period on suspension should be treated as the period spent on duty.

8. After the order of suspension was recalled and the petitioner joined his service, the petitioner was granted promotion to higher post by the order dated 3rd December, 1985.

9. By the Charge-sheet No. 16 dated 15th August, 1987 Sri T.R. Sarkar, Deputy Superintendent of Police, D.E.B., Burdwan submitted a charge sheet against the petitioner in the Criminal Case from which the petitioner was discharged pursuant to the order passed by the Division Bench of this Court. In the said Charge-sheet it was stated as follows:

A prima facie case u/s. 161/120B I.P.C. read with Sec. 5(1)(d)(2) of P.C. Act. 1947 being made out against all the four accd. persons mentioned in Colmn. 4, 1 submit this charge sheet against the said accd. 1. Dhananjoy Haider 2. Manindra Nath Halder 3. Sunil Kr. Bose and 4. Bali Chandra Laha under the said sections of law to stand trial in the court of law.

The accd persons were discharged from the bail bond during investigation of the case which could not be completed within that period for some reasonable grounds. The accd persons may therefore, kindly be summoned to face their trial in the case. The disciplinary authority of the said four accd persons, has accorded sanction for prosecution in respect of all the four accd. persons as referred under law.

This Charge-sheet is a subject matter of challenge be fore this Court.

10. Mr. Partha Sarathi Sengupta, learned Advocate appearing on behalf of the petitioner has submitted that when the Police Authorities failed and neglected to submit a charge-sheet or a report in the final form in terms of the Judgment of the Division Bench passed in Criminal Revision Case No. 1433 of 1984, the Learned Sub-divisional Judicial Magistrate by the Order dated 13th September, 1984 discharged the accused persons including the petitioner as no charge-sheet or report in the final form has been submitted by the Investigating Officer. The Order of the Learned Magistrate was passed in view of the Order passed by the Division Bench of this Court and that when the petitioner was discharged in terms of the Order passed by the Division Bench, it was no longer open to the Police authorities to act contrary to the Order passed by the Division Bench inasmuch as the matter had reached its finality. It was further submitted by Mr. Sengupta in order to cover up the lapses and delay in submitting the charge sheet it was alleged that the accused persons were discharged from bail which was nothing but an administrative lie.

11. On the point of delay in the submitting the charge sheet Mr. Sengupta, relied upon a Full Bench decision of the Patna High Court in the case of Madheshwardhari Singh and Another Vs. State of Bihar, wherein the Special Bench of the Patna High Court held:

In all Criminal Prosecutions the right to a speedy public trial is now an inalienable fundamental right of the citizen under Article 21 of the Constitution. This cannot be allowed to be whittled down on any finical ground of the hoary origin of this right in the Constitutional history of Great Britain and America, nor considerations of affluence of development countries are even remotely relevant or germane in this context. Therefore, it is not possible to read down the right of speedy and public trial in India for the fact that our society as yet is not as developed or affluent as the Anglo-American one.

12. Reference was also made to another Special bench Judgment of the Patna High Court in the case of Surya Narayan Singh & Ors. v. State of Bihar, reported in AIR 1987 Patna 219 where the similar view was taken on the basis of the aforesaid decision. It was submitted that "fundamental right to a speedy public trial extends to all criminal prosecutions for all offences generally irrespective of their nature and including capital crime."

13. Reliance was also placed by Mr. Sengupta on a Judgment of this Court in the case of Raj Tilak Mitra v. Himangshu Chatterjee and Ors. reported in 1980 (2) CLJ 33 wherein Nirmae Chandra Mukherji, J. (as His Lordship then was) held that if the accused is discharged in a criminal case and that the said order is not challenged, in that event the order passed by a Court must have some sanctity.

14. In the instant case the Deputy Superintendent of Police D.E.B., Burdwan submitted that Charge-sheet after lapse of about 3 years flouting the order and Judgment passed by the Division Bench of this Court wrongly alleging that the accused persons were discharged from the Bail Bond during investigation of the case, which could not be completed within the period for some reasonable grounds. On this incorrect and baseless basis the charge-sheet was submitted after lapse of some many years. This statement made by the. Deputy Superintendent of Police in the Charge-sheet was wholly incorrect and wrong in the facts and circumstances of this case inasmuch as the accused persons were not at all discharged from the Bail Bond during investigation of the case, but on the contrary they had to be discharged altogether from the Criminal case in view of the Order passed by the Division bench of this Court wherein the Division Bench directed that if the charge-sheet or the report in the final form was not submitted in respect of the said Criminal Case pending against the petitioner in the Court of the Sub-divisional Judicial magistrate, Burdwan within eight weeks from the date of the said Judgment which was passed on 19th July, 1984, the Learned Magistrate should discharge the petitioners and as a matter of fact, the petitioners were discharged by the Learned Magistrate on that ground alone. If the petitioners were discharged from the Criminal Case, in the circumstances stated above, it was no longer open to the Police Authorities, particularly the Deputy Superintendent of Police, D.E.B., Burdwan to issue a charge-sheet in the aforesaid case. The Order passed by the Division Bench was binding upon the Deputy Superintendent of Police and it appears that the Deputy Superintendent of Police tried to overreach the Order passed by the Division Bench of this Court

by making some incorrect and deliberate misstatements in the Charge-sheet. Due to delay the charges had become stale.

15. With regard to right to speedy trial, it is now established that such speedy trial is a fundamental right under Article 21 of the Constitution of India. Consistency is an administrative virtue : delay a vice. "A court may be prepared to imply some limit to the life of a statutory power granted without express limit of time and to quash a decision, taken beyond what it regards as its reasonable life. Delay in the use of a power will be a significant element in deciding whether it has been abandoned and delay may throw doubt on the motive of the decision maker to exercise a power or on its reasonableness" (See Doulkey's Administrative Law 6th Edition Page 199).

16. In this particular case the offence alleged to have been committed was on 10th January, 1983 and that the Order of the Division Bench of this Court was passed on 17th July, 1984 and ultimately, the petitioner was discharged by the Learned Magistrate on 13th of September, 1984 and that on 15th of August, 1987, that is to say, after lapse of three and a half years, the matter was sought to be re-opened by the Police Authorities, this is, in my view, not permissible at all. This not only offends the right to speedy trial, but such a course of action is not permissible in view of the Division Bench Judgment of this Court. When the Criminal Case terminated because of an order passed by the Division Bench of this Court, it was no longer open to the Deputy Superintendent of Police, D.E.B., Burdwan to reopen the same and submit a charge-sheet ignoring and/or flouting the Judgment and Order passed by the Division Bench.

17. Accordingly, in my view, the Charge-sheet No. 16 dated 15th August, 1987 is illegal and void inasmuch as the same was submitted flouting and/or ignoring the Judgment of the Division Bench of this Court. It is a cardinal principle that if any action is taken violating the decision or order passed by the Court the same is a nullity and non-est in the eye of law apart from the commission of contempt.

18. Nobody appears on behalf of the respondent and no affidavit in opposition was filed by the respondent even though directions were given on 8th July, 1987 for filing affidavits. The matter was heard in part earlier and notice was given by the learned Advocate appearing on behalf of the petitioner to the Advocate on Record of the State of West Bengal regarding "this Matter. Nobody appeared. Xerox copy of the Notice be kept on record. In the result, the writ petition succeeds. The impugned Charge-sheet No. 16 dated 15th August, 1987, which is Annexure "L" to the petition is quashed.

There will be no order as to costs.